IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1117 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVESH DEVSHANKARBHAI DAVE

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1117 of 2004

MR NM KAPADIA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19/09/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that seven I.P.C. offences were registered against him before Kopadra Police Station between 27/02/03 and 07/08/03 for offences relating to theft of gold and silver ornaments, cash, computers etc.. It was also alleged against the petitioner that two witnesses had given statements against the petitioner.

3. On the strength of the aforesaid seven registered offences and two statements of unnamed witnesses, the detaining authority found the petitioner to be a "dangerous person" and with a view to prevent him from continuing his illegal activities leading to a threat to public order, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that some I.P.C. offences were registered, it could not be said that the activities of the petitioner would lead to a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that seven I.P.C. offences have been registered against the petitioner but these offences relate to individual properties of different persons. Therefore, merely because the aforesaid offences have been registered against the petitioner, it cannot be said that it amounted to a threat to public order, though it may be treated to be a threat to a law and order situation.

7. On going through the grounds of detention and the list of offences registered against the petitioner, it can be gathered that these are the offences which relate to individual movable and immovable properties and therefore, it cannot be said that the activities of the petitioner would lead to a threat to public order.

8. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

9. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses. Then it can be seen that without knowing the names of the witnesses, the petitioner could not make an effective representation and hence, his right to make an effective representation under Article 22(5) of the Constitution of India has been denied. In that case, further continuance of the detention of the petitioner cannot be sustained. Therefore, on these counts, the order of detention is required to be quashed and set aside.

10. For the foregoing reason, this petition is allowed. The impugned order of detention dated 19/09/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Bhaveshbhai Devshankarbhai Dave, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

pravin/